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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,888

03/22/2004

Robert William Winter

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07/08/2010

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EXAMINER

MYINT, DENNIS Y

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROBERT WILLIAM WINTER

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Appeal 2009-0008522  
Application 10/805,888  
Technology Center 2100

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Before DALE M. SHAW, *Division 2 Support Administrator*.

ORDER REMANDING APPEAL TO EXAMINER

This is a Director ordered remand under 37 C.F.R. §41.35(c) for the matter identified below. Accordingly, the application is herewith being remanded to the Examiner.

This application was electronically received at the Board of Patent Appeals and Interferences on August 10, 2009. A Docketing Notice was mailed and Appeal Number 2009-008522 was assigned on April 22, 2009. A second Docketing Notice was mailed and Appeal Number 2009-013890

Appeal 2009-008522  
Application 10/805,888

was assigned on August 13, 2009. The Docketing Notice mailed August 13, 2009, and Appeal Number 2009-013890 are hereby vacated.

Claims 28 and 38 of the instant application contain functional language that may be indefinite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. *See Ex Parte Rodriguez*, 92 USPQ2d 1395 (BPAI 2009); *see also Aristocrat Techs. Austl. Pty. Ltd. v. Int'l Game Tech.*, 521 F.3d 1328 (Fed. Cir. 2008). On September 2, 2008, the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph,” located at: [http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section\\_112\\_6th\\_09\\_02\\_2008.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf) . Thus, there is a question as to whether claims 28 and 38 and the claims which depend upon these claims meet the requirements of being definite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

Accordingly, it is ordered that the application is remanded to the Examiner to determine if claims 28 and 38 and the claims which depend upon these claims meet the requirements of 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

babc

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